

## **Election Statute Review Committee (ESRC) Comments to the Secretary of State Regarding the Revised Draft of Proposed Election Rules Dated November 8, 2017**

### Proposed Rule 2.16.3:

Some counties expressed concern that this rule is overbroad. The proposed rule refers to an entire county instead of just the county clerk and recorder. Additionally, this rule appears to try and preempt procedures that counties already have in place with the appropriate state agencies. For example, in Arapahoe County the courts system already has a communication plan in place with OIT. If this system was attacked, it does not impact SCORE. Also, the terms "any other notice" seems extremely broad absent a definition of "notice." Further, there are 16 critical infrastructure sectors. We do not believe the Secretary of State intended for this rule to include federal notifications to dams, wastewater systems, or power reactors.

This rule also seems unenforceable as currently written. Does the Secretary of State's office intend to hold the county clerk and recorder responsible if it is not notified? Or another county employee not within the clerk's office? If the latter is true, then we do not understand where the Secretary's authority comes from to promulgate a rule for the Denver International Airport, for example.

We believe that there are ways for the Secretary to narrow this rule. For example, the Secretary could:

- define which federal agency must notify the county
- specify that this rule is for the county clerk and recorder instead of the entire county
- define "any other notice"
- not include every single designation of critical infrastructure, or
- have this rule only be in effect for a certain timeframe before Election Day

Thank you very much for the opportunity to submit comments.